GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Deepak Insulated Cable Corporation, Ltd., Bangalore.

Award of the Additional Industrial Tribunal, Bangalore Published.

Read the following papers:—

(1) Letter No. A. I. T. 1037/67-68, dated 29th February 1968, from Shri V. C. Ramachandran Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 28th February 1968.

Present :

Sri V. C. Ramachandran, B.A., B.Sc., A. R. C. S., Bar-at-law, *Presiding Officer*

A. I. D. No. 9 of 1967

The Workmen of Deepak Insulated Cable Corporation, Ltd., Bangalore.

I Party.

Vs

The Management of Deepak Insulated Cable Corporation Ltd., Bangalore.

... *II Party.*

APPEARANCES

For the I Party : Sri M. C. Narasimhan, Advocate, Bangalore.
For the II Party : Sri B. R. Puttananjappa, Secretary, Mysore, State Employees' Association, Bangalore.

Reference

(Government Order No. LMA 92 LLD 67, dated 24th February 1967).

AWARD

The Government of Mysore have referred an Industrial Dispute between the workmen and the Management of Deepak Insulated Cable Corporation Ltd., Tumkur Road, Bangalore, by their Order No. LMA 92 LLD 67 dated 24th February 1967 under Section 10 (1) (d) of the Industrial Disputes Act, 1947, the said dispute being whether the employees of the said Deepak Insulated Cable Corporation Ltd. are justified in demanding the wages for the period of strike and lock-out *i e.* from 24th September 1966 to 4th October 1966 (both days inclusive).

2. The workmen of Deepak Insulated Cable Corporation Ltd., who will be referred to hereafter as the I Party are represented by the Secretary, Deepak Insulated Cables Corporation Employees Union and the Management will be referred to hereafter as the II Party. The I Party contend that there are about 200 workers in the factory and they had been agitating for sometime before the strike for confirmation of the services of the employees having put in six months of service On 24th September 1966, the workmen came to know that an Engineer by name, N. S. Vatsa Kumar was forced to tender his resignation which caused them to strike work. The workmen also wanted that the Issue of confirmation to be settled. On the said date at about 7-30 A.M they went in a procession to the chairman's office situated in the premises of the Kirloskar Electric Co., Ltd., Bangalore. They wanted to return to work on Monday the 26th September 1967 but in the meantime, the management declared a lock-out which was continued from time to time by the Management. The workmen then formed themselves into a Trade Union and tried to negotiate with the Management. As the Management was not in a mood to come to any settlement the dispute was taken before the conciliation officer in whose presence an agreement was signed regarding confirmation of employees, Vatsa Kumar's resignation, lifting of lock-out and the question of wages for the period of strike and lock out to be adjudicated upon. The workmen submit that they are entitled to wages for the period of strike and lock-out in full as the strike was justified and the lock out declared was unjust and illegal. They pray that full wages be ordered to be given to them for the said period of strike and lock out of 9 days from 24th September 1966 upto 4th October 1966 (Both days inclusive).

8. The Second Party states that the strike was sudden without any intimation and that as a consequence of the sudden and unjustified strike and in the interest of security of persons and property, they were forced to declare a lock-out which was lifted from 5th October 1966, according to the settlement reached before the Conciliation Officer. The II Party is engaged in manufacturing winding wires and strips which is a continuous process carried on during all the three shifts and any sudden stoppage of work entails loss to the Company. On the morning of 24th September 1966, the workmen suddenly stayed away from work. They had also physically prevented the other workmen from entering the factory. The workmen did not inform the Management about the strike nor did they tell them the reasons that provoked them to strike. The Management made attempts to find out the reasons, but their attempts were treated with insults and threats by the workmen. N. S. Vatsa Kumar voluntarily tendered his resignation on 23rd September 1966 which was accepted by the Management. There was no agitation previously with regard to the security of service. The factory itself commenced production only in the month of August 1966 and the incident has taken place in September 1966. The Management tried to contact the workers but without success and they had no assurance that the workers would resume work normally and in order to avoid further losses if the workmen were to go on strike again and to ensure the safety of persons and property, the management was compelled to declare a lock-out from time to time with the hope that it would be lifted as soon as there was reasonable assurance that the normalcy would be restored. Under the circumstances, the II Party submits that the lock-out declared by them was thoroughly justified and legal and was an inevitable consequence of the sudden and unjustified strike started by the workmen and the subsequent intransigent attitude adopted by them. The Management further submit that they are not liable to pay wages for the period of strike and the lock-out and pray that the reference may be answered in their favour.

4. Three Issues were framed by this Tribunal, (1) with regard to the legality and justification of the strike and (2) with regard to the justification and legality of the lock-out declared by the Management and lastly the wages if any that the workers are entitled to.

5. The I Party examined on its side three witnesses including N. S. Vatsa Kumar, (W.W. 1) who is said to be the immediate

cause of the strike and the consequent lock-out. According to N. S. Vatsa Kumar on 23rd September 1966 he had some quarrel with D. R. Mani who was in charge of the wire drawing Department which led him to write out a resignation letter which was submitted to the Chief Engineer. Subsequently the misunderstanding between Mani and N. S. Vatsa Kumar was patched up and Vatsa Kumar withdrew the resignation and apprised the Managing Director about his intention to withdraw the resignation, but the Managing Director instead of returning the resignation letter asked Vatsa Kumar to go to the registered office where he was asked to sign the voucher for wages up to 23rd and forced to resign. On 24th September 1966 at about 7-10 A.M. Vatsa Kumar narrated the incident to the workmen who had come for work on that day. The workmen had also grievances about their working conditions and all of them went in procession from the factory to the chairman's office. Vatsa Kumar and few others saw the chairman at about 3-30 P M and the Chairman promised to look into the matter and the workmen left. K Balachar (W W. 2) states that after the interview with the Chairman on 24th September 1966, the workmen returned to work but they were not allowed in and that on the next day also they wanted to work but they were not allowed and that no enquiries were made by any other workmen. The evidence of W.W. 2 is corroborated by W.W. 3 who also deposes that the workmen went to work but he saw a board put up on the gate signifying the lock-out of the factory.

6. The Management have also examined three witnesses who are officers employed in the II Party Company. The Personnel Officer, K. R. Vallabha Rao, (M W. 1) states that the factory is engaged in enamelling which is a continuous process. On 24th September 1966 when he went to the factory at about 7-20 A.M. he observed groups of workers standing near the main gate preventing the workers from going inside the factory. They were shouting. He stopped the vehicle inside the main gate and asked them the reason for their behaviour. They insulted and threatened him. He then rushed inside the Factory and informed the Managing Director by telephone. The Managing Director came to the factory shortly thereafter and directed him and others to meet the workers and ascertain from them the reason for their strike. M.W. 1 and others proceeded in a car and met the procession led by Mani, Vatsa Kumar and Shankar. When they questioned them, all the workers surrounded them and tried to assault them. They then returned to the factory. Notices were put up declaring

lock-out of the factory from time to time till the matter was settled before the Conciliation Officer. The Production Engineer of the II Party testifies that there are 3 main sections in the Production Department of the Factory (1) wire drawing (2 Enamelling Department, where the wires drawn are made to pass through varnish which acts as insulating material and (3) paper covering of the wires. According to him the enamelling is done in all the three shifts and is a continuous process as it requires certain temper which has to be maintained continuously and any sudden stoppage will result in the wire being burnt entailing loss to the Company. The Security Officer (M.W. 3) had also followed the Personnel Officer to fetch Mani, Shankar and others to enquire what was the cause of the trouble. When they approached them, Mani is alleged to have stated, "You are all fools, Cheeky, and spies of management. To do justice to the workers, you all come and join us, as otherwise, we will kill you by the time we leave the factory. I do not care even if I am dismissed". Subsequently the lock-out was declared on the advice of the Security Officer as the workers were in an agitating mood.

7. It is undisputed that the workers at any rate those who were in the first shift had struck work on the morning of 24th September 1966. It is not shown that the strike is illegal, but at the same time, the workmen have to place material before the Tribunal to take the view that the strike was justified under the circumstances. Two reasons are advanced as the cause for the strike on the part of the workmen Firstly that the Management was not conferring permanent status on those workers who have completed six months of service and secondly that Vatsa Kumar was unjustly discharged from service. Both those grounds necessitated the strike. There are other methods of redressing those grievances. It was not necessary to stop from work because a particular official was discharged or because a particular workman had not been made permanent. They had not even presented either orally or in writing their demands in respect of those two grievances. The Management was not aware that the discharge of a particular official would lead to unrest or that the workmen were agitated about their temporary status. Instead of following the well recognised methods of negotiation or conciliation, the workers without resorting to those methods have all of a sudden stopped from going to work. In those circumstances, it must be conceded that the strike was wholly unjustified. Even on facts, the workmen's strike has no justifiable basis. It appears that the

factory itself started enrolling workers only in April and May 1966 and no worker had completed six months. As a matter of fact, the factory went into production only in August 1966 and none of the workers would have been made permanent at the time of the strike as none of them had completed six months' service. No written demand was made by the workmen for confirmation of any of them. There would, therefore, be no justification for strike on that ground. Vatsha Kumar has tendered his resignation which reads as follows:—

> "I wish to bring to your kind notice that since my health is not good of late, I am advised to take rest with immediate effect.
>
> I request you kindly to accept my resignation forthwith and relieve me from the service of the Company immediately and save me from getting further troubles."

Vatsha Kumar's version that he wrote the resignation letter as a means of influencing and impressing upon some departmental heads to make them to come to terms at the request of the Managing Director is unacceptable as the letter bears no reference whatsoever to any misunderstanding between him and Mani, nor about any quarrel that might have taken place between him and Mr. Mani or any other matter except his ill-health. He has not given any reason as to why he has mentioned his failing health as the reason for resignation and not what the Managing Director requested him to do. To my mind, it appears it is a voluntary resignation which is sought to be withdrawn later by Vatsha Kumar and which was refused by the Management. That can hardly be a cause for justifiable strike on the part of the workmen. In these circumstances, my answer to the first Issue is that the strike which was resorted to by the workmen on 24th September 1966 was unjustifiable and the workmen are not entitled to claim wages for the period of strike.

8. If the strike was unjustified the lock-out declared by the Management on the same day must be deemed to be justified as the Management had reasons to apprehend that the second and third shift workers may also stop from work and there may be danger both to the persons and property of the management. It will be remembered that according to the evidence of the Management, the so-called leaders of the workmen, *viz.*,

Shankar, Mani and Vatsha Kumar have acted in a manner which intimidated the officers of the Company by threatening them even to kill them. It was pointed out by the learned Counsel for the workmen that there was no necessity to take a serious view of the so-called threats because the officers have not even complained to Police about it. In a case of sudden strike without any notice and without making any demands by the workmen, the Management cannot be expected to know how the workmen would behave in the event the factory remaining open. They have reason to suspect foul play on the part of the workmen and hence they immediately declared lock-out on the afternoon of 24th September 1966. That lock-out continued from time to time because according to the Security Officer, he heard reports that the workmen were still in an agitating mood and that violence on the part of the workmen cannot be altogether ruled out. The difficulty that the Management felt was that there was no union of workmen with whom they could negotiate and come to terms with regard to the resumption of work and restoration of normalcy.

It is true that no damage was done by the workmen but one never knows what will happen when the workers are in agitating mood. The Management has necessarily to safeguard their personnel and property and hence on the workers striking work, the management rightly declared a lock out.

9. The question, however, does not end there. Although the lock-out is said to be justified at its commencement, there was no necessity on the part of the Management to continue the lock-out of the factory even after the formation of an Union and on the commencement of negotiations with the officers of the Union. It will be noticed that immediately after the strike, the Trade Union of the workmen came into existence and the Officers of the Trade Union sought to have discussions with the Management. They have written a letter to the Management on 27th September 1966 in which they have stated as follows:

> "However, the management instead of settling the issues, has chosen to declare a lock-out of the factory from 24th September 1966 itself. Till now, the lock-out has not been lifted. We consider that this action of the management is unjust and unwarranted."

The lock-out itself commenced on 24th September 1966 and it is stated in the notice of the lock-out that the situation will be

reviewed and the decision taken in this behalf be duly notified to the workers. There has been no serious attempt at reviewing the situation. The person on whose information the declaration of lock-out was made from time-to-time *viz.* the Security Officer, D. K. Subramanya Iyer, has not produced any reliable data before this Court to justify the subsequent lock-outs. Subramanya Iyer (M W. 3) deposes that he advised the Management to continue the lock-out as the workers were still in agigating mood and that discussions with M. S. Krishnan and U. S. Venkatram failed and he was informed that the workers were still in violent mood, but during cross examination, he deposes that he advised the subsequent lock-out because he did not know that the workers will continue to work normally and he is not in a position to say as to who told him that the workers were in a violent mood. In short, there is very flimsy material justifying the subsequent declaration of lock-outs. There is no evidence that the workers were still refusing to go to the work. There is no evidence that the workers formed themselves into conspiracy to agitate or destroy property if they resumed work. On the contrary, the workers *viz.* W. W 2 and W W. 3 have stated that they were anxious to get back to the work and the strike of the 1st day, if at all, was, only to ventilate their grievances before the Chairman of the Company. It is pointed out by the Management that the nature of work in the factory requires that it should be run continuously without any break, as any break in the running of the factory will entail considerable loss especially in the enamelling Section. That may, no doubt, be a good ground for declaration of the lock-out when they were not quite sure whether the workers would come to the work or not. but that ground has no force when the workers themselves through their Union stated that the lock-out should not have been declared meaning thereby that they were prepared to go for work. It is pointed out by the Management that the workers under the settlement were prepared to come to work only after all the disputes had been settled. In this connection, the letter of the President of the Union, Ext W-3 was pressed into service, wherein it is stated that it is the desire of the employees to restore normalcy at the earliest and work resumed on the basis of a just settlement of the above issues. It was contended that the workmen wanted to resume work only in the event of disputes being settled and hence the management could not lift the lock-out till after the settlement was reached between the Union and the Management under Ext.M.1, Ext M.1 however, does not say that the lock-out was to be lifted only after the settle-

ment but on the otherhand the wages of the workers for the period of strike and lock-out was agreed to be referred voluntarily for adjudication by the Industrial Tribunal.

10. Apart from the question of facts even on the point of law the declaration of the lock-out subsequent to the dispute being taken before the Conciliation Officer is illegal and contrary to the provisions of Section 24 of the Industrial Disputes Act. In this case the declaration of lock-out was made first on 24th September 1966 by the Notification Ext.M 3 (a). Next by another notification dated 26th September 1966 as per Ext.M.3(h). The third one was on 26th September 1966 as per Ext.M.3(c), the fourth one was on 27th September 1966 as per Ext.M 3(d), the fifth one was on 30th September 1966 as per Ext.M.3(e) the sixth one was on 3rd October 1966 as per Ext.M 3(f) and the last one was on 4th October 1966 as per Ext M.3(f). The conciliation proceedings commenced on 29th September 1966 and under Section 23 of the Industrial Disputes Act, no workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings, and under Section 24 of the Industrial Disputes Act, a lock out is illegal if it is commenced or declared in contravention of Section 23. In view of the provision of the Industrial Disputes Act, the declaration of lock-out subsequent to the commencement of conciliation proceedings is illegal. The declaration of lock out under Exts. M3(a), M3(b), M3(c) and M.3(d) are legal because there was no conciliation proceedings pending on the dates when the lock-out was declared. But the subsequent lock-outs declared under Exts.M.3 e), M.3(f) and M.3(g) are in contravention of the provisions under Section 23 of the Industrial Disputes Act. In other words, the lock-out is for the period from 1st October 1966 up to 4th October 1966 is prohibited under Section 23 of the Industrial Disputes Act and therefore, illegal. If the lock-out has been a continuous lock-out and not by separate declarations, then the intervention of conciliation proceedings during the period of lock out may not be illegal, but in this case the declaration of lock-out was for definite periods and any fresh declaration of lock-out after the conciliation proceedings had been started will be illegal. In that view of the matter, it seems to me that declaration of lock-out by notification subsequent to 29th September 1966 under Exts. M.3 (e), M.3 (f) and

M.3 (g) covering the period from 1st October 1966 to 4th October 1966 (both days inclusive) is illegal and the workmen are entitled to claim wages for those four days. My answer to the Issues No. 2 and 3 is that the lock-out declared by the Management is justified and legal at the commencement but became unjustified and illegal after the hours of work on 30th September 1966 and therefore, the workers entitled to wages for the period from 1st October 1966 to 4th October 1966.

11. There are two decisions which throw light on justification of strike and lock-out. In 1960 II LLJ 243, the following observations are made with regard to the justification of the strike :

> "While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made may well be justified."

With regard to the justifiability of lock-out, the following observations found in 1963 LLJ 122 may be noticed :

> "It seems to us, however, that though the lock-out was justified at its commencement its continuance was wholly unreasonable and therefore, unjustified. In a case where a strike is unjustified and is followed by a lock-out which has, because of its long duration, become unjustified it would not be a proper course for an industrial tribunal to direct the payment of the whole of the wages for the period of the lock-out. We would like to make it clear that in a case where the strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all. Similarly where the strike is justified and the lock-out is unjustified the workmen would

> be entitled to the entire wages for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified, a case for apportionment of blame arises."

In the instant case, I am of the view, both on facts and in law that declaration of lock-out from 1st of October 1966 is both illegal and unjustified and the workmen are entitled to wages for that period.

12. In the result and in view of my findings, I make the following Award :—

The Management do pay to the workmen wages including allowances for the period from 1st October 1966 to 4th October 1966 (Both days inclusive) and the claim of the workmen for wages from 24th September 1966 upto 30th September 1966 (both days inculsive) is rejected.

There will be no order as to costs as each party has succeeded in part.

V. C. RAMACHANDRAN,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.
28-2-1968.